IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
Jessica R. Cooper, Presiding Judge

SCOTT M. CAIN
Plaintiff-Appellee,

v

WASTE MANAGEMENT, INCORPORATED
TRANSPORTATION INSURANCE COMPANY
Defendants-Appellees and Appellants,

and

SECOND INJURY FUND
Defendant-Appellant and Appellee.
_____/

Docket nos. 125180 and 125111

REPLY BRIEF ON APPEAL - AMICUS CURIAE FORD MOTOR COMPANY

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STATEMENT OF THE BASIS FOR THE JURISDICTION OF THE COURT

The Court has jurisdiction to review the opinion that was entered by the Court of Appeals in *Cain v Waste Mgt, Inc*, 259 Mich App 350; 674 NW2d 383 (2003) on November 6, 2003, by the authority of the Workers' Disability Compensation Act of 1969, MCL 418.101, et seq. MCL 418.861a(14), second sentence. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706, 732; 614 NW2d 607 (2000).

STATEMENT OF QUESTIONS PRESENTED[1]

I

WHETHER THE WORKERS' COMPENSATION APPELLATE COMMISSION EXCEEDED THE SCOPE OF THE REMAND ORDER OF THE COURT BY AWARDING THE EMPLOYEE WEEKLY COMPENSATION FOR A TOTAL AND PERMANENT DISABILITY.

Plaintiff-appellee Cain answers "No."

Defendants-appellees Waste Mgt - Transportation answer "Yes."

Defendant-appellant Second Injury Fund answers "Yes."

Amicus curiae Ford Motor answers "Yes."

Court of Appeals answered "No."

Workers' Compensation Appellate Comm answered "No."

Board of Magistrates did not answer.

II

WHETHER THE "LOSS OF INDUSTRIAL USE" STANDARD MAY BE APPLIED IN A CLAIM TO WEEKLY COMPENSATION FOR A SCHEDULED DISABILITY DESCRIBED BY MCL 418.361(2)(a) - (l).

Plaintiff-appellee Cain answers "Yes."

Defendants-appellees Waste Mgt - Transportation answer "No."

Defendant-appellant Second Injury Fund answers "No."

Amicus curiae Ford Motor answers "No."

Court of Appeals answered "Yes."

Workers' Compensation Appellate Comm answered "Yes."

Board of Magistrates did not answer.

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[1] These four questions were propounded by the Court in the order granting leave to appeal.

III

WHETHER *PIPE v LEESE TOOL & DIE CO*, 410 MICH 510; 302 NW2D 526 (1981) SHOULD BE OVERRULED.

Plaintiff-appellee Cain answers "No."

Defendants-appellees Waste Mgt - Transportation answer "Yes."

Defendant-appellant Second Injury Fund answers "Yes."

Amicus curiae Ford Motor answers "Yes."

Court of Appeals did not answer.

Workers' Compensation Appellate Comm did not answer.

Board of Magistrates did not answer.

IV

WHETHER WEEKLY COMPENSATION AND DIFFERENTIAL COMPENSATION MAY BE AWARDED FOR THE TOTAL AND PERMANENT DISABILITY OF THE LOSS OF BOTH LEGS BY THE TERMS OF MCL 418.361(3)(b) WHEN THE EMPLOYEE HAS THE PHYSICAL LOSS OF ONE LEG AND THE LOSS OF THE INDUSTRIAL USE OF THE OTHER.

Plaintiff-appellee Cain answers "Yes."

Defendants-appellees Waste Mgt - Transportation answer "No."

Defendant-appellant Second Injury Fund answers "No."

Amicus curiae Ford Motor answers "No."

Court of Appeals answered "Yes."

Workers' Compensation Appellate Comm answered "Yes."

Board of Magistrates did not answer.

STATEMENT OF FACTS[2]

The right leg of plaintiff-appellee Scott M. Cain (Employee) was amputated above the knee and replaced with a prosthesis because of a personal injury arising out of and in the course of employment by defendant-appellee Waste Management, Incorporated (Employer) on October 25, 1988. The left leg was not amputated but much surgery was necessary and a brace provided to restore function. (Employer Appendix 46a)

The Employee filed an application for mediation or hearing with the Bureau of Workers' Disability Compensation (Bureau)[3] on August 25, 1992, for base weekly compensation from the Employer and augmentation of the base weekly compensation[4] from defendant-appellant Second Injury Fund (Fund) for one of the types of total and permanent disability that is described by the Workers' Disability Compensation Act of 1969 (WDCA), MCL 418.101, et seq., known as the loss of industrial use of both legs.[5] (Employer Appendix 11a) There was not a particularized claim for one of the types of scheduled disability described by another statute in the WDCA.[6] (Employer Appendix 22a) The Employer and Fund appeared and contested the claim. (Employer Appendix 4a)

The Bureau then remitted the case to the Board of Magistrates (Board) for hearing and disposition.

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[2] The numbers after "Employer Appendix" are the pages of the appendix on appeal that was filed by defendants-appellants Waste Management, Incorporated, and Transportation Insurance Company in Docket no. 125111 and after "Fund Appendix" are the pages of the appendix on appeal that was filed by defendant-appellant Second Injury Fund in Docket no. 125180.

[3] Now the Workers' Compensation Agency.

[4] Commonly known as differential weekly compensation because the amount of the augmentation of the base weekly compensation is the difference between the amount of the base weekly compensation in the calendar year when the employee was injured and the amount of the base weekly compensation available in each calendar year afterward. MCL 418.521(2).

[5] MCL 418.361(3)(g).

[6] MCL 418.361(2)(k).

The Board awarded the Employee base weekly compensation from the Employer and the augmentation of the base weekly compensation from the Fund with the decision that there was the loss of the industrial use of both legs as there was an undenied physical loss of the right leg from amputation and the left leg was "totally useless without a prosthetic device [i.e., the brace]." *Cain v Waste Mgt, Inc*, unpublished order and opinion of the Board of Magistrates, decided on December 3, 1993 (Docket no. 120393017), slip op., 7-8. (Employer Appendix 10a-11a)

The Workers' Compensation Appellate Commission (Commission) reversed with the decision that there was no loss of the industrial use of both legs when considering function with use of prosthetics. A claim that there was a scheduled disability of the left leg was denied because the Employee had failed to make that claim before the evidentiary hearing started before the Board. *Cain v Waste Mgt, Inc*, 1997 Mich ACO 249, slip op., 10-11, 12. (Employer Appendix 22a-23a, 24a)

The Court of Appeals denied leave to appeal. *Cain v Waste Mgt, Inc*, unpublished order of the Court of Appeals, decided on August 7, 1997 (Docket no. 203539).

The Court remanded the case to the Court of Appeals for consideration as on leave to appeal granted. *Cain v Waste Mgt, Inc*, 459 Mich 863; 586 NW2d 87 (1998).

The Court of Appeals reversed the decision by the Commission with the ruling that a determination of a loss of the industrial use of both of the legs to qualify an injured employee as totally and permanently disabled could be made only by the function without the use of an aid such as a prosthetic brace. *Cain v Waste Mgt, Inc*, unpublished opinion of the Court of Appeals, decided on May 2, 2000 (Docket no. 214445), slip op., 3. (Employer Appendix 40a)

The Court granted leave to appeal, *Cain v Waste Mgt, Inc*, 463 Mich 995; 625 NW2d 784 (2001), and reversed the Court of Appeals with the ruling that a determination of a loss of the industrial use of both of the legs could be made only by the function *with* the

use of an aid and remanded the case to the Commission to consider the claim that there was a scheduled disability of the left leg. *Cain v Waste Mgt, Inc*, 465 Mich 509, 524; 638 NW2d 98 (2002). (Employer Appendix 60a-61a)

On remand, the Commission awarded the Employee base weekly compensation from the Employer and augmentation of the base weekly compensation from the Fund with the decision that there was a scheduled disability of the left leg because "the injury to [the] left leg equates with anatomical loss . . . the limb retains no substantial utility" and the loss of the right leg by amputation fulfilled another type of total and permanent disability known as loss of both legs. *Cain v Waste Mgt, Inc*, 2002 Mich ACO 130, slip op., 6-7. (Employer Appendix 32a-33a)

The Court of Appeals granted leave to appeal to the Employer and the Fund and consolidated the two appeals, *Cain v Waste Mgt*, unpublished order of the Court of Appeals, decided on September 6, 2002 (Docket nos. 242104 and 242123) (Fund Appendix 1a), and affirmed. *Cain v Waste Mgt, Inc*, 259 Mich App 350; 674 NW2d 383 (2003). (Employer Appendix 62a-72a)

The Court granted leave to appeal to the Employer and the Fund. *Cain v Waste Mgt, Inc*, 470 Mich 870; - NW2d - (Docket nos. 125111 and 125180, rel'd June 3, 2004). (Fund Appendix 8a, 9a)

ARGUMENT

I

THE TWELVE TYPES OF SCHEDULED DISABILITY THAT ARE DESCRIBED BY A STATUTE IN THE WORKERS' DISABILITY COMPENSATION ACT OF 1969 CAN BE ESTABLISHED ONLY BY MEASURING THE AMOUNT OF THE PHYSICAL LOSS OF THE PART OF THE BODY THAT WAS INJURED WITH ONE EXCEPTION.

A. *RENCH v KALAMAZOO STOVE & FURNACE CO*, 286 MICH 314; 282 NW 162 (1938) DOES NOT INFORM THE STATUTE THAT CURRENTLY APPLIES.

The text of the statute that was the subject of the decision by the Court in the case of *Rench v Kalamazoo Stove & Furnace Co*, 286 Mich 314; 282 NW 162 (1938) is decidedly different from the text of the statute that is the subject of this case. The Court recited the entire text of the statute that was the subject in the case of *Rench, supra*, 315-316,

> "[t]he workmen's compensation act, 2 Comp. Laws 1929, § 8426 (Stat. Ann. § 17.160) provides that:
>
> 'In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to-wit:
>
> 'For the loss of a thumb, sixty-six and two-thirds per centum of the average weekly wages during sixty weeks;
>
> 'For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of average weekly wages during thirty-five weeks;
>
> 'For the loss of a second finger, sixty-six and two-thirds per centum of average weekly wages during thirty weeks;
>
> 'For the loss of a third finger, sixty-six and two-thirds per centum of average weekly wages during twenty weeks; * * *
>
> 'The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of section nine.'
>
> The section nine referred to is 2 Comp. Laws 1929, § 8425 (Stat. Ann. § 17.159), which reads as follows:
>
> 'While the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employee, a weekly compensation equal to sixty-six and two-thirds per centum of his average weekly wages, but not more than eighteen dollars nor less than seven dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor shall the total amount of all compensation exceed nine thousand dollars.'"
>
> The text of the statute that is the subject in this case states that,
>
> "[i]n cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury

shall be 80% of the after-tax average weekly wage subject to the maximum and minimum rates of compensation under this act for the loss of the following:

(a) Thumb, 65 weeks.

(b) First finger, 38 weeks.

(c) Second finger, 33 weeks.

(d) Third finger, 22 weeks.

(e) Fourth finger, 16 weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of ½ of that thumb or finger, and compensation shall be ½ of the amount above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

(f) Great toe, 33 weeks.

(g) A toe other than the great toe, 11 weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of ½ of that toe, and compensation shall be ½ of the amount above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire toe.

(h) Hand, 215 weeks.

(i) Arm, 269 weeks.

An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.

(l) Eye, 162 weeks.

> Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye." MCL 418.361(2)(a) - (l).

There are four differences between the texts of these two statutes. One of the differences concerns the amount of the weekly workers' disability compensation that is available. Previously, the amount of weekly compensation was 66.66% of the average weekly wage of the employee who lost a thumb as the text of the statute that the Court recited in the case of *Rench, supra*, 315, stated that, "[f]or the loss of a thumb, *sixty-six and two-thirds per centum of the average weekly wage* during sixty weeks." (emphasis supplied) Now, section 361(2) allows eighty percent of the after-tax average weekly wage by stating that,

> "[i]n cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be *80% of the after-tax average weekly wage* subject to the maximum and minimum rates of compensation under this act for the loss of the following:" (emphasis supplied)

A second difference between the texts of the statutes concerns the duration of weekly compensation. Previously, the duration of the eligibility for weekly compensation was sixty weeks for a thumb and only sixty weeks as the text of the statute that the Court recited in the case of *Rench, supra*, 315, stated that, "[f]or the loss of a thumb, sixty-six and two-thirds per centum of the average weekly wage during *sixty* weeks." (emphasis supplied) Now, section 361(2)(a) allows weekly compensation for sixty-five weeks by stating that,

> "[i]n cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be 80% of the after-tax average weekly wage subject to the maximum and minimum rates of compensation under this act for the loss of the following:
>
> (a) Thumb, *65* weeks." (emphasis supplied)

The third difference between these texts concerns what exactly was a *loss*. Previously, the statute did not have any description or definition of any individual loss as the Court observed when deciding the case of *Rench, supra*. Now, section 361(2)(e), second,

third, and fourth sentences; section 361(2)(g), second and third sentences; section 361(2)(i), second sentence; section 361(2)(k), second sentence; and section 361(2)(l), second sentence, provide explicit descriptions of each loss by stating,

> "[t]he loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of ½ of that thumb or finger, and compensation shall be ½ of the amount above specified.
>
> The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.
>
> * * *
>
> The loss of the first phalange of any toe shall be considered to be equal to the loss of ½ of that toe, and compensation shall be ½ of the amount above specified.
>
> The loss of more than 1 phalange shall be considered as the loss of the entire toe.
>
> * * *
>
> An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.
>
> * * *
>
> An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.
>
> * * *
>
> Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye."

And the fourth difference between these texts concerns the kind of disability which is commonly known as total and permanent disability. Previously, total and permanent disability was an integral part of the same statute which described scheduled disability as the Court observed in the case of *Rench*, *supra*, 315,

> "[t]he workmen's compensation act, 2 Comp. Laws 1929, § 8426 (Stat. Ann. § 17.160) provides that:

> 'In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to-wit:
>
> 'For the loss of a thumb, sixty-six and two-thirds per centum of the average weekly wages during sixty weeks;
>
> 'For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of average weekly wages during thirty-five weeks;
>
> 'For the loss of a second finger, sixty-six and two-thirds per centum of average weekly wages during thirty weeks;
>
> 'For the loss of a third finger, sixty-six and two-thirds per centum of average weekly wages during twenty weeks; * * *
>
> '*The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of section nine.*'" (emphasis supplied)

Now, section 361(2) does not include this kind of disability. The kind of disability which is commonly known as total and permanent disability is distinctly codified. MCL 418.361(3)(a) - (g). And the text of that codification is different from that previously recited by the Court in the case of *Rench, supra*, by adding *permanent and complete paralysis*, section 361(3)(e), *incurable insanity*, section 361(3)(f), and *permanent and total loss of industrial use*, section 361(3)(g).

These differences between the texts of the statutes then and now preclude applying *Rench, supra*, as authority for deciding this case. *Don Moran v People*, 25 Mich 355, 364; 12 AR 283 (1872). Justice Christiancy said there,

> ". . . we suppose it to be well understood by judges and the profession, that intimations and suggestions of this kind, in no way necessary to the decision of the case, are not always, or generally, as carefully considered and examined as the questions upon which the case itself turns; and hence the familiar rule, that judicial opinions are to be considered as authority, and construed, only *secundum subjectam materiam*."

Indeed, the change in the text means that the decision by the Court in the case of *Rench, supra*, does not inform the statute which applies. First, there is now actual text in

section 361(2)(e), (g), (i), (k), and (l) explicitly describing every one of the twelve individual types of scheduled disability. The Employee is remiss to say in the *Brief on Appeal - Appellee*, Argument IA, 7, that, "the term 'loss' in [section 361(2)(a) - (l)] is not defined in the statute. *Rench*, [*supra*]."

Second, there is now separate codification of the kind of disability commonly known as scheduled disability and the kind of disability commonly known as total and permanent disability by section 361(2)(a) - (l) and section 361(3)(a) - (g) that did not exist when the Court decided *Rench, supra*. The Employee seeks to conflate the two different kinds of disability which are separately codified based on a decision which was rendered when there was no separate codification and there was no specific definition of the types of the two kinds of disability.

B. LEGISLATIVE ACQUIESCENCE IS NOT A SOUND BASIS FOR UNDERSTANDING A STATUTE.

The Employee relies on the idea of legislative acquiescence for understanding the text of a statute by stating in the *Brief on Appeal - Appellee*, Argument IE, 14,

> ". . . in 1954 and 1956 the legislature amended the scheduled loss provisions of MCL §418.361(2) and MCL §418.361(3). PA 1954, No. 175, section 10; PA 1956, No. 195. The legislature is presumed to know how the courts have interpreted the terms of a statute and if the legislature allows the terms to remain during revisions of the statute, the legislature is presumed to approve and adopt the courts' interpretations. Dean v Chrysler Corp, 434 Mich 655, 664-667 (1990). However, the legislature did not amend the term 'loss' in subsection (2) to exclude either destruction less than amputation or loss of industrial use.
>
> Thus, the legislative and judicial history of the provision further support the WCAC's award of benefits. The courts and legislature have allowed claims for specific loss in cases of physical injury less than amputation from almost the beginning of the Act."

The idea of legislative acquiescence is not sound. *Van Dorpel v Haven-Busch Co*, 350 Mich 135; 85 NW2d 97 (1957). The Court said in the case of *Van Dorpel, supra*, 147-148,

> "[i]n the final analysis the objection may fairly be stated thus: Our Court interprets a statute; whether right or wrong our decision henceforth becomes judicially immutable and we are powerless to change it; there is only 1 way it can be changed; if we are wrong we must wait for the legislature to tell us so; if by its long silence and inaction the legislature does not speak out and tell us we are wrong then it has perforce by the same token told us we are right; in any case this Court is forever fettered and powerless to reinterpret the statute in question. We have instead delegated that function to the legislature. This curious doctrine can be boiled down even more: right or wrong in the *Curtis Case*, we are helpless to change it.
>
> Such a doctrine is to squarely place the legislature in the position of a super supreme court. We also consider it an abdication of judicial responsibility. We reject such a doctrine flatly along with the sort of mechanistic thinking that can arrive at such an ironic impasse. This doctrine has irreverently been called the 'one shot' theory of legislative interpretation. We ourselves brand it a Rip-Van-Winkle doctrine of judicial stagnation and inertia. We happen strongly to disagree with it and in this we are not alone."

The idea of legislative acquiescence is contrary to the statutes which have been enacted by the Legislature for the methodology to understand statutes. MCL 8.3a. MCL 750.2.

MCL 8.3a states that,

> "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning."

MCL 750.2 states likewise,

> "[t]he rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed according to the fair import of their terms, to promote justice and to effect the objects of the law."

Certainly, *the common and approved usage of the language* and *the fair import of their terms* directs attention to the actual text of statutes, not case law. Decisions that are

not faithful to the plain text of a statute must be reversed as insubordinate and certainly not perpetuated.

C. THE CONSEQUENCES OF A STATUTE DO NOT INFORM THE MEANING OF THE TEXT.

The consequence or result of a particular case from the plain text of a statute cannot inform the meaning of that text. *People v McIntire*, 461 Mich 147; 599 NW2d 102 (1999). *Maier v Gen Tel Co of Mich*, 466 Mich 879; 645 NW2d 654 (2002). In the case of *McIntire, supra*, the Court rejected considering the nontextualist view commonly known as "absurd result" analysis. The Court recognized and endorsed the dissent in *People v McIntire*, 232 Mich App 71; 591 NW2d 231 (1998), *McIntire, supra*, 152, that required attention to text and rejected the consideration of the results in a given case from applying that text,

> ". . . our obligation is, by examining the statutory language, to discern the legislative intent that may reasonably be inferred from the words expressed in the statute. *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). A fundamental principle of statutory construction is that 'a clear and unambiguous statute leaves no room for judicial construction or interpretation.' *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995); *Lake Angelus v Oakland Co Rd Comm*, 194 Mich App 220, 224; 486 NW2d 64 (1992). Finally, in construing a statute, we must give the words used by the Legislature their common, ordinary meaning. MCL 8.3a; MSA 2.212(1).
>
> These traditional principles of statutory construction thus force courts to respect the constitutional role of the Legislature as a policy-making branch of government and constrain the judiciary from encroaching on this dedicated sphere of constitutional responsibility. Any other nontextual approach to statutory construction will necessarily invite judicial speculation regarding the probable, but unstated, intent of the Legislature with the likely consequence that a court will impermissibly substitute its own policy preferences. See *Cady v Detroit*, 289 Mich 499, 509; 286 NW 805 (1939) ('Courts cannot substitute their opinions for that of the legislative body on questions of

> policy'). Unfortunately, the [Court of Appeals] majority has abandoned these traditional rules of construction, ignored the plain text of the statute before us, and substituted its own policy preferences for those of our Legislature by finding an unexpressed legislative intent that a witness who lies in a one-man grand jury proceeding forfeits statutory immunity granted under MCL 767.6; MSA 28.946. While [we] do not question the sincerity of [the Court of Appeals majority's] effort, [we] view the [Court of Appeals] opinion as a herculean, yet ultimately unsuccessful, attempt to create an ambiguity where none exists in order to reach a desired result, albeit one with which [we] might wholeheartedly agree [if we were legislators] authorized to enact policy." *McIntire, supra*, 152-153.

Chief Justice Corrigan echoed this in concurring in the disposition of *Maier, supra*, 880-881,

> "[a] first principle of statutory interpretation is that *the words expressed in the statute are the law*. Unexpressed motivations or intentions of legislators are *not* the law because they have not been voted on and passed by a majority of both houses of our Legislature and signed by the Governor. Courts thus lack authority to elevate unexpressed intentions above the text of the law itself.
>
> This Court has repudiated nontextual modes of interpretation. For example, in *McIntire, supra*, we rejected the so-called 'absurd result' doctrine of avoiding the text of a statute when judges view the result as absurd or unjust. We agreed 'with Justice Scalia's description of such attempts to divine unexpressed and nontextual legislative intent as 'nothing but an invitation to judicial lawmaking.' ' *McIntire*, supra at 156, n 2, quoting Scalia, A Matter of Interpretation: Federal Courts and the Law (New Jersey: Princeton University Press, 1997), p 21.
>
> Courts do, of course, routinely state that discerning legislative intent is the goal of statutory interpretation. The Legislature's *actual* intent is *not*, however, the true object of inquiry. Rather, courts should attempt to 'ascertain the legislative intent *that may reasonably be inferred from the words expressed in the statute*.' *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002) (emphasis supplied). See also *Veenstra v Washtenaw Country Club*, 466 Mich 155 (2002)." (emphasis by the Chief Justice)

The Employee disregards this by reverting to the plastic methods allowed by "absurd results" interpretation and "liberal" construction because the text of section 361(2)(a) - (l) does describe a scheduled disability as the amputation of parts of the

body and not as the *paralysis* or *the loss of industrial use*. *Brief on Appeal - Appellee*, Argument IC, 10.

RELIEF

Wherefore, amicus curiae Ford Motor Company prays that the Supreme Court reverse the judgment of the Court of Appeals.

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